

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 679 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

BAI PARVATI W/O SAKHARAM BHALIA

Versus

KAMLABEN W/O CHHOTABHAI UTTAM CHAND

Appearance:

MR BHARAT B KANSARA for Petitioners
MS VASUBEN P SHAH for Respondent No. 1
(MR PB MAJMUDAR) for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. The Legal Representatives of the deceased defendant No.3 in Rent Suit No.2015 of 1975 have filed this Revision under section 29(2) of the Bombay Rent Act.

2. On 24.3.2000 Ms.K.J.Brahmbhatt, learned Counsel for the respondent No.1 informed that the respondent No.1 had expired on 1.4.1994. The Revisionists were directed to take steps for substitution of legal representatives of landlord - respondent No.1. The matter was adjourned to 28.4.2000. No application for substitution of legal representatives of the deceased respondent No.1 was moved till 28.4.2000. On 28.4.2000 the matter was adjourned to 23.6.2000 and then on 23.6.2000 it was adjourned for today, but till date no application for substitution has been moved nor anybody appeared on behalf of the revisionist. In view of information by Ms.K.J. Brahmbhatt learned Counsel for the respondent No.1 landlord that the respondent No.1 had expired on 1.4.1994, this Revision as against the landlord respondent No.1 abates and the order for abatement is not required inasmuch as steps for substitution were not taken within the time prescribed.

3. The revision has been filed in a peculiar manner. It was filed by the legal representatives of the deceased defendant No.3 whereas Judgment of the trial Court shows that there were as many as five defendants. The case of the landlord was that the defendant No.1 was the tenant and he had sub-let the accommodation to defendant Nos.2 to 5. No Revision has been filed by the defendant No.2 who is one of the alleged sub-tenants. Likewise no revision has been filed by the defendants No.4 & 5 who were likewise alleged to be sub-tenants. The plea of sub-tenancy was not up-held by the trial Court. Suit for eviction was filed on several grounds. One was illegal sub-letting by defendant No.1 to defendants No.2 to 5. Another ground was that the tenant - defendant No.1 was in arrears of rent for more than six months. The third ground was that the defendant No.1 has without reasonable cause not used the suit premises for the purpose for which it was let out for a continuous period of six months immediately preceeding the Suit. The trial Court found that sub-letting was not established. It further found that the defendant No.1 was in arrears of rent for more than six months which he failed to pay within a month of service of notice of demand. Accordingly, the decree for eviction, recovery of arrears of rent, etc. was filed. The decree for eviction against all the defendants was passed.

4. As stated earlier since there were five defendants in the Suit all of them should have been joined in the revision as respondents excluding the defendant No.3 or his legal representatives. Only one

defendant, namely, defendant No.1 has been impleaded as respondent No.2. The defendants No.2 and 4 to 5 have not been added as the respondents. As such cause title is defective. This is another ground for dismissal of this revision.

5. The Appellate Court dismissed the Appeal and confirmed the decree of the trial Court. Concurrent findings of fact recorded by the two courts below hardly require any interference on the facts and circumstances of the case.

6. For the reasons stated above, the Revision is dismissed. No order as to costs.

sd/-

Date : July 21, 2000 (D. C. Srivastava, J.)

sas